



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 15255788

Date: JUL. 20, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a key chemist, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish the substantial merit or national importance of the proposed endeavor, nor did it establish that the Petitioner is well positioned to advance the proposed endeavor. Additionally, the Director found that the evidence did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner asserts that the Director failed to consider all favorable evidence and erred in denying the petition.¹

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), as either an advanced degree

¹ On the Form I-290B, the Petitioner checked the box that she will submit a brief and additional evidence within thirty days of filing the appeal. The appeal was filed on September 3, 2020. As of the issuance of this decision, we have not received a brief or additional evidence. Therefore, the Petitioner's appeal statement on the Form I-290B will serve as the sole explanation for the basis of the appeal. Although this explanation states that the Director failed to consider all favorable evidence, the Petitioner has not identified what specific evidence the Director failed to consider.

professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit

documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).² *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,³ grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.⁴

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree.⁵ On the Form I-140, Immigrant Petition for Alien Worker, which the Petitioner filed in October 2019, she provided the following information:

Part 5 - Additional Information About the Petitioner

Section 11. Occupation: Synthetic Expert

Part 6 - Basic Information About the Proposed Employment

Section 1. Job Title: Key Chemist (Exempt)

Section 2. SOC Code: 19-1020⁶

Section 3. Nontechnical Job Description: Perform [redacted] development and troubleshooting as well as [redacted] validation in a [redacted] environment.

According to the ETA 750 Part B, the Petitioner worked until August 2019 as a postdoctoral research scholar at the University of [redacted]. In this position, her “research work expanded to [redacted] library synthesis, encoding & decoding, high-throughput screening, solid phase synthesis & purification, [redacted] synthesis, [redacted] self-assemble [redacted] development.”

² In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998).

³ See also *Poursinav. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

⁴ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁵ The Petitioner earned a foreign Ph.D. in medicinal chemistry in 2014.

⁶ Since the filing of the petition, the Department of Labor’s Occupational Information Network has reclassified the standard occupational classification (SOC) code of 19-1020. It now corresponds to SOC code 19-1029.04 for the occupational category of “Biologists.” See <https://www.onetonline.org/link/summary/19-1029.04> (last visited July 20, 2021). Notably, the Petitioner did not select SOC code 19-2031, corresponding to “Chemists,” which is the title of her current job and was also her field of academic study. Nor did she select SOC code 19-1021, for “Biochemists and Biophysicists,” an occupational category which involves researching, developing, and testing drugs. For more information, please visit <https://www.onetonline.org/link/summary/19-1021.00> for more information (last visited July 20, 2021).

In the initial filing, the Petitioner provided significant information concerning her past work, which included research on drugs to address central nervous system diseases and cancer, but little information concerning the proposed endeavor. The initial filing also included a [redacted] letter evidencing an offer to the Petitioner to work as a “Key Chemist (Exempt)” and informing her that she would be eligible to be considered for grant funding at the discretion of the company and according to [redacted] plans and grant agreements. Aside from the nontechnical job description on the Form I-140 itself, the initial filing’s only indication of the Petitioner’s proposed future work included statements that she proposed to: (1) improve current [redacted] methods by developing novel [redacted] agents and (2) continue her work in drug development research, particularly in [redacted] systems and high throughput compound screening. Although she mentioned that she has planned projects for developing novel [redacted] methods, she did not provide further details on what any of those projects will involve. The numerous letters of recommendation submitted on her behalf did not describe the future work the Petitioner would undertake in her proposed endeavor, but rather focused on her past work and achievements.

The Director requested evidence concerning the Petitioner’s proposed future work, noting in particular that she had not provided sufficient information concerning her proposed endeavor, as opposed to her past work. In the request for evidence (RFE), the Director also explained that the first prong of Dhanasar considers the “specific endeavor which is the proposed work” and not the field overall. The Director acknowledged that the Petitioner’s endeavor would be in the field of drug development, but that identifying the field itself did not establish details about the specific proposed endeavor. In her RFE response, the Petitioner offered numerous illustrations of her past work, in addition to an overview of pharmaceutical chemistry and what it allows her to do. Although she provided additional evidence and an updated personal statement, these documents offered little detail concerning the proposed future endeavor.

From statements in the RFE response, we understand that the proposed endeavor involves “researching [redacted] drugs.” The Petitioner plans to “be a research scientist to continue my research in the field of drug development,” and “translate my previous pharmaceutical chemistry expertise into actual drug developments.” The Petitioner also explained some of the ways that her current projects will move forward but did not explain whether these projects were a part of her proposed endeavor.⁷ A new [redacted] letter contained information on the Petitioner’s recent past achievements as a Key Chemist in addition to her current work, including that of advancing research on topical [redacted] medicine, topical [redacted] medicine, and a new drug product to address [redacted] and cancer.⁸ Notably, the new [redacted] letter did not include a description of the Petitioner’s proposed endeavor.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement, we look to evidence documenting the “potential prospective impact” of her work. As explained in the Director’s decision, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889. In *Dhanasar*, we further noted that “we look

⁷ For instance, she noted that her research results on an impurity study will advance to Phase 3 clinical studies and that a drug that has completed its clinical studies will advance to a new drug application.

⁸ The Director correctly observed that this letter contained an explanation of the drug’s application to treating [redacted] but only mentioned, without explaining, its application to treating cancer.

for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.*

As a result of her research work, the Petitioner claimed that several new drugs and/or new drug formulations will benefit the pharmaceutical and healthcare industries as well as the American people, but we do not know what specific benefits she anticipates her research will produce. The Petitioner must not only identify her endeavor but also establish what specifically she anticipates its impact will be. While the authors of the recommendation letters provided their opinions on how the Petitioner’s past work is of substantial merit and national importance, none of the letters provided information on the impact of the Petitioner’s proposed endeavor. The author of the [] letter stated that the Petitioner’s work will be the subject of U.S. and worldwide patents of which the Petitioner will be a co-inventor, that []’s work improves people’s lives, and that the Petitioner’s presence on the research and development team is indispensable. As these claims pertain only to the Petitioner’s research work performed for [] they do not establish the impact that her proposed endeavor work will have. Both the Petitioner and the author of this letter described the Petitioner’s development of a “smart chemistry” approach, however neither offered evidence to substantiate the existence of the approach, whether others use the approach, or how it has impacted the field of drug development beyond the Petitioner’s projects and the work performed specifically within []

Overall, we have insufficient information concerning the proposed endeavor with which to determine whether it has substantial merit and national importance. The Petitioner must support her assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Here, the Petitioner has not met her burden. We do not know, for instance, what specific research areas the Petitioner intends to focus on within the field of drug development, what her planned projects are, whether her research will involve the development of therapeutics to treat cancer (as had been originally stated), or how much time the Petitioner will devote to her proposed endeavor while also executing her research duties for []. Recalling the nontechnical job description from the Form I-140, we also cannot ascertain how the Petitioner’s work will incorporate [] method development and troubleshooting as well as [] method validation in a [] environment.” In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. The initial filing and the RFE response contained insufficiently detailed statements concerning the proposed future work and as such, we conclude that the Petitioner has yet to identify her specific proposed endeavor.

In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well positioned to advance it under the *Dhanasar* analysis. Because the Petitioner has not provided sufficient information regarding her proposed endeavor, we cannot conclude that she meets either the first or second prong or that she has established eligibility for a national interest waiver.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.